

Appl. No. : 10/780,780
Filed : February 18, 2004

REMARKS

This is in response to the Office Action mailed July 19, 2005. Claims 1-13 are now pending in the application.

Applicant has amended various of the claims to address antecedent basis issues to ensure the claims satisfy the requirements of 35 U.S.C. §112.

By the Office Action, the Examiner reiterated the previous restriction requirement and made the same final. In response, Applicant hereby elects to prosecute claims directed to Group I (Claims 1-13) and has canceled the claims (Claims 14-19) directed to the non-elected invention.

The Examiner next rejected Claims 1-13 under 35 U.S.C. § 103 as being unpatentable over Spiess et al. (USN 5,340,232) in view of Dannhauser (USN 4,973,191). The Examiner contends that Spiess et al. discloses a locking device for a sewer grate. The Examiner acknowledges that Spiess et al.'s device, however, does not include a locking bolt. The Examiner thus cites Dannhauser as teaching a sewer cover with associated bolt, and asserts that it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the locking sewer cover of Spiess et al. with a locking bolt assembly, as taught by Dannhauser.

Applicant respectfully traverses this rejection.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference. Second, there must be a reasonable expectation of success. Third, the prior art reference must teach or suggest all the claim limitations.

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M.P.E.P. § 2142. Applicant asserts that the proposed combination does not establish a prima facie case of obviousness.

The Cited References

Spiess et al. discloses a manner of securing a cover (3) in such a way that it can be easily removed and put back in place. (Abstract, emphasis added). Spiess et al. is thus not particularly concerned with a method of locking a grate or cover, but rather removably retaining the cover to the frame. Thus, Spiess et al. discloses use of a retaining element (6) configured to selectively engage the cover/grate (3). This retaining element (6) is configured to be elastically deformed (col. 2, lines 22-24), thus permitting it to be moved out of engagement with the cover/grate (3).

Dannhauser similarly discloses a manner of connecting a manhole lid (2) to a frame (1) so that the lid can be easily inserted into and removed from the frame. As disclosed, the lid (2) may be directly connected to the frame (1) with one or more screws (9).

As disclosed, each of these references are directed to manners of connecting a cover/grate to frame so that the cover/grate can be easily removed. On the other hand, the present invention is directed to a method of connecting a grate to a frame in a manner which locks the grate to the frame to prevent its removal.

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No Suggestion to Combine

Applicant asserts that there is no suggestion to combine the references. As noted by the Federal Circuit, “[a]lthough a reference need not expressly teach that the disclosure contained therein should be combined with another, the showing of combinability, in whatever form, must nevertheless be ‘clear and particular’.” Winner Int’l Royalty Corp. v. Wang, 53 U.S. P.Q. 1580 (Fed. Cir. 2000).

As indicated above, Spiess et al. discloses a manner of connecting a cover/grate to a frame so that the cover/grate may be easily removed and put back into place. Spiess et al.’s solution is to use a flexible retaining element. Dannhauser discloses a method of connecting a manhole cover to a surrounding frame. Dannhauser’s solution is to thread screws through the manhole into the frame.

Each of these reference discloses a particular manner of connecting the respective elements to one another, and these solutions are different from, and inapplicable to the other. Dannhauser discloses connecting a manhole cover directly to a supporting frame with screws. This is incongruous to the solution disclosed in Spiess et al., where the cover/grate does not connect directly to the frame, but is instead connected indirectly via the retaining element. Thus, not only do the references not contain any suggestion to combine them, they actually teach away from one another.

No Reasonable Expectation of Success

The Examiner suggests that it would have been obvious to provide the locking sewer cover of Spiess et al. with a locking bolt assembly, as taught by Dannhauser. Aside from the fact the references do not

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suggest such a combination, as disclosed above, Applicant asserts that such a combination is either inoperable or does not result in the application as claimed.

It is not clear from the Examiner's Action exactly how the Examiner proposes that Spiess et al. should be modified in accordance with the teachings of Dannhauser. In that the references teach incompatible methods of connection, with Dannhauser disclosing direct connection of the cover to the frame using screws and Spiess et al. disclosing indirect connection using a retention element, a simple combination of these teaches results in a cover which is both connected directly with screws and indirectly with one or more retention elements. This combination, however, is inoperable in that there appears to be no way for Spiess et al.'s cover/grate to be connected directly to the frame (the cover does not rest over a portion of the frame for accepting a screw, as in Dannhauser, among other things).

If the Examiner is asserting that the result of the combination of Dannhauser and Spiess et al. is a cover retained with a retaining element having an associated locking bolt, Applicant asserts that such a combination is not only not suggested by the references and not obvious, but again not operable. In particular, it does not appear possible to somehow combine the locking screws of Dannhauser with Spiess et al.'s retaining element. In such a combination, where would the locking bolt/screw attach and how would the locking bolt/screw cooperate with the retaining element to retain the cover/grate to the frame?

The Combination Does Not Result in the Invention as Claimed

Lastly, Applicant asserts that even the asserted combination does not result in the invention as claimed, in that the references do not disclose all of the elements of the claims.

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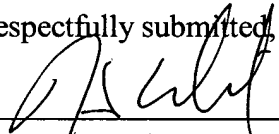
Claim 1 recites a sewer grate locking mechanism including a nut supported by a nut retainer affixed to the cover frame below the grate, a plate also located below the grate, the plate both connected to the grate (via an upstanding suspension structure) and attachable to the cover frame via a bolt extendable through the plate into engagement with the nut. Neither Spiess et al. or Dannhauser discloses a nut supported by a nut retainer which is connected to a frame, or a plate located below the cover, the plate supporting an upstanding suspension structure and a bolt configured to pass both through the plate and into engagement with the nut. Again, Spiess et al. discloses only one single member for connecting a cover to a frame: an elastically deformable retaining element. Dannhauser similarly does not disclose a nut, nut retainer supported by a frame, or a plate connected to the cover and connectable indirectly to the frame via a bolt, but instead only discloses screws directly passing through the cover into a surrounding frame. Simply, in that both of the references lack a disclosure of these elements, the combination thereof can not include those claimed elements.

Applicant asserts that the other claims similarly disclose elements which are neither taught or suggested by the cited prior art, whether alone or in combination. Independent Claim 10 recites many elements similar to those of Claim 1. Claim 2 recites that the bolt has an cavity in a head thereof, the cavity partially obstructed. The Examiner cites Dannhauser as teaching a special screw (9), however, Applicant finds no such disclosure anywhere in Dannhauser, and certainly does not find any reference to the particular bolt configuration claimed. Various other of the claims recite "U"-shaped members which encircle bars of the grate, angle members affixed to the frame, and configurations of the plate, none of which are disclosed by the cited references.

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Summary

Applicant asserts that Claims 1-13 are in a condition for allowance and respectfully request a notice as to the same. If any matters remain outstanding, the Examiner is invited to contact the undersigned by telephone.

Respectfully submitted,
Dated: August 25, 2005 By: 
R. Scott Weide
Registration No. 37,755
Weide & Miller, Ltd.
Bank West Building, 5th Floor
7251 West Lake Mead Blvd., Suite 530
Las Vegas, NV 89128
(702) 382-4804 (Pacific time)